

Remarks

Claim Rejections under 35 U.S.C. § 112.

Claims 13-17 stand rejected under 35 U.S.C. 112 paragraph 1 as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 13-17 have been canceled. New claims 19-27 have been added and claim 24 consistently recites a “second tube.”

Claim Rejections under 35 U.S.C. § 103(a).

Claims 13-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lambert et al., Intestinal absorption of vitamin B12 in rats with gastric reaction or gastric diversion in view of US 4,315,509 to Smit et al. Claims 13-17 have been canceled. New claims 19-27 have been added. Claims 19 and 24 are the only independent claim.

In accordance with claim 24 of Applicants’ invention the method of treating obesity requires implanting a synthetic stomach comprising a bellow-like storage forming an antrum with a first and second tube connected to the storage. The first and second tubes connected to the storage allow the bypass of the stomach because the first tube is connected to the esophagus of the patient and the second tube is connected to small intestine of the patient. The Examiner argues that Lambert discloses a method for performing a stomach bypass in which the esophagus is connected to the small intestine, and that Smit teaches the implant required by the claimed method. Applicants submit that the implant taught by Smit does not bypass the stomach as taught by the claimed invention and does not recite a storing synthetic stomach, henceforth, making the claimed invention non-obvious.

According to column 4, lines 41-44, Fig. 1 shows a catheter 20, which is used as an insertion or removal device or tool. The tool is used to insert or remove the actual implant 30. (See also column 3 lines 5-10.) The tool includes a remotely operated pair of tweezers for holding or releasing a loop 28 on the insertion or removal of the actual implant 30. The tubular implant 30 shown in Fig. 2 “is designed to be implanted in the pyloric part of the stomach and extend into the intestine in order to cover the villi and limit or prevent the

absorption of food, calories, alcohol, or the like.” The implant 30 taught by Smit is pushed down the throat into the stomach and intestine to allow food to bypass the villi and prevent food absorption in the intestine. The catheter used to push the implant down the patient’s throat is not a part of the implant, but a tool which can hold the implant for its removal or insertion into the stomach. The implant taught by Smit when inserted in the patient as described in Smit places the stomach, not the esophagus, in communication with the intestine. Therefore, the device is not a stomach bypass.

Applicant’s further submit that the implant 30 taught by Smit teaches a device adapted for use as an intestine mock-up, but not a stomach mock-up as in the claimed invention. The distinction is apparent from the structural difference in the implant of Smit and the claimed implant. As new claim 24 indicates the method claimed includes implanting a synthetic stomach that comprises a bellow-like storage forming an antrum for storing food therein. This distinguishes the claimed implant from the tubular implant taught by Smit. Additionally, Smit only teaches that the upstream end of the tubular implant is connected with the organic fabric (col. 5 lines 26-29) but not the down-stream end. Accordingly, Smit fails to teach the implantable device used in the stomach bypass method described in claim 24. Applicants submit that Smit’s failure to teach the claimed synthetic stomach implant makes the claimed invention non-obvious to Lambert in view of Smit.

Claims 25-27 depend from claim 24 and are all therefore patentable over Lambert in view of Smit for at least the same reasons that claim 24 is patentable.

Claims 19-23 have been added to the application. Claim 19 teaches the implantable synthetic stomach. Claims 20-23 each depend from independent claim 19. Each of the claims teaches material that is patentable over the cited references and is supported by the specifications; therefore, applicants request consideration of these new claims in view of the arguments distinguishing the claimed invention.

Applicants respectfully request further consideration and allowance of all the pending claims as amended.

If the Examiner has any outstanding questions, he is invited to call Applicants undersigned representative at 617-443-9292.

Appl. No. 10/722,109
Amdt. Dated March 20, 2007
Response to Office action of December 20, 2006

Respectfully submitted,



Timothy M. Murphy
Registration No. 33,198
Attorney for Applicants

Bromberg & Sunstein LLP
125 Summer Street
Boston, MA 02110-1618
(617) 443-9292

02757/00101 515047.1